



A Condo Director's Guide

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Introduction

Congratulations! You are a director of a condominium corporation. Although the job of a director sometimes feels like a thankless job and the pay is not great, you have agreed to fulfill a very important role in your community. Being a director can be a rewarding experience. In order to properly carry out your duties, a director must be aware of their obligations and responsibilities and the standard to which they will be held accountable.

A Condo Director's Guide is intended to provide you with a quick reference to your obligations and responsibilities as a director and some of the issues you deal with. There are many types of condominiums permitted under the Condominium Act, 1998 (ie. standard, common element, vacant land, phased, and leased condominiums). This guide focuses on the Standard Condominium in Ontario although much of the information provided will also apply to other types of condos as well. All references are to the Ontario *Condominium Act, 1998* ("Condo Act") unless stated otherwise and includes updates as a result of amendments to the Condo Act that came into force in November 2017. You can download a free copy of the Condo Act and Regulations at www.ontario.ca/laws. It is advisable to read the sections of the Condo Act and Regulations referred to in this Guide. The Guide does not replace professional advice about specific situations. As no two condominiums are alike, it is important and advisable that you consult an experienced condominium lawyer about your particular situation.

What is a Condominium?

Condominiums are specifically created by the *Condominium Act, 1998* and as such are creatures of statute. With the exception of Common Element Condominiums, condominiums are a unique form of ownership that allows the ownership of property to be divided between individual ownership and group ownership. The individual unit owner has exclusive use and ownership of their unit. The boundaries of the unit are defined in the Declaration. Any part of the condominium property that is not defined as a unit is a common element. Unit owners also obtain an undivided interest in the common elements which they own along with all other unit owners as tenants in common in proportions as stated in the Declaration. A condominium corporation is born when the Declaration and Description have been registered.

The Condominium Corporation and its Directors

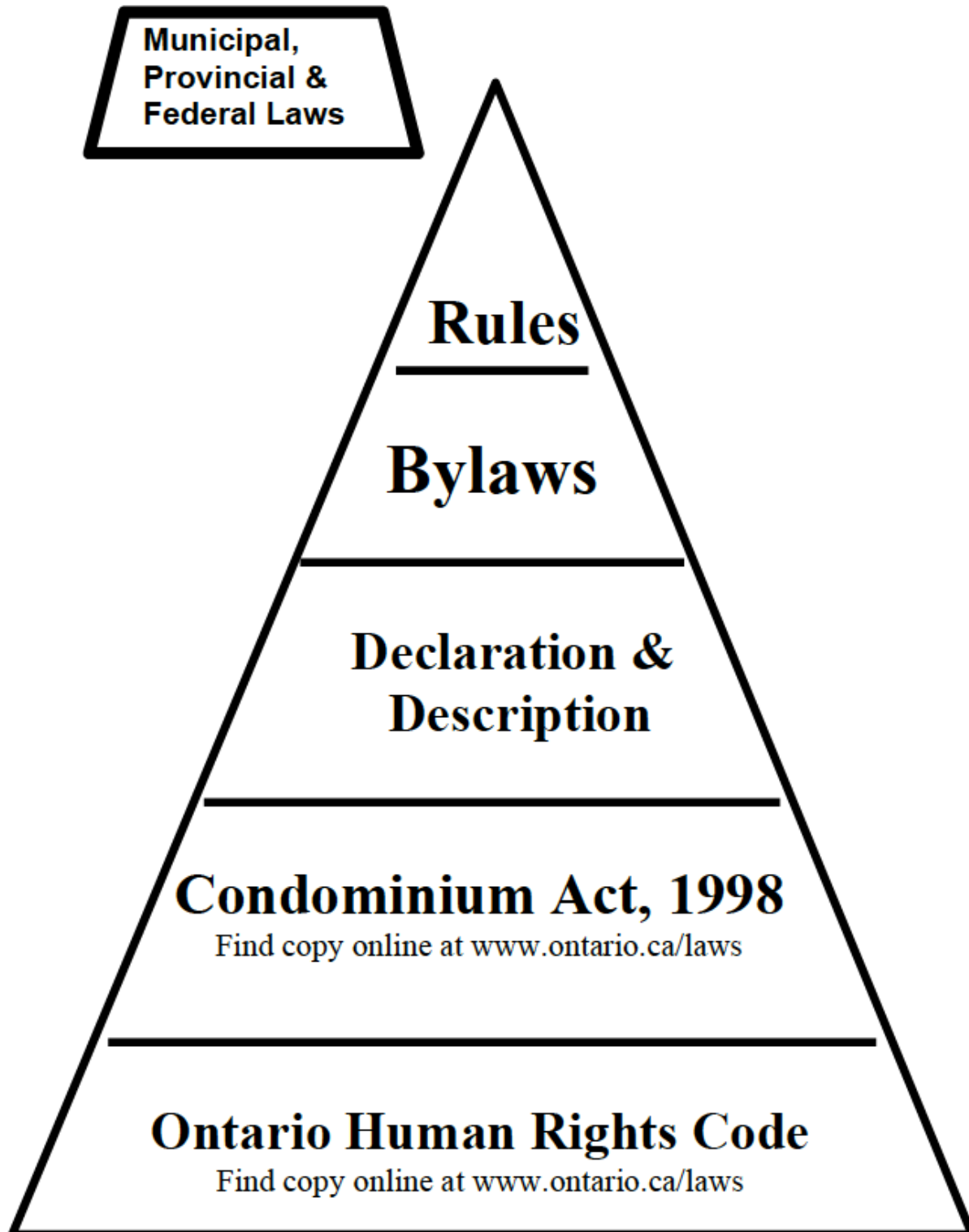
A condominium corporation is created to manage the property and assets on behalf of the owners. Under s. 27, a Board of Directors is elected to manage the affairs of the corporation and carry out the objects of the corporation as set out in s. 17.

The Board must fulfill their obligations and responsibilities in accordance with the *Condominium Act, 1998*, the condominium's governing documents, namely the Declaration, Bylaws and Rules and any other provincial, federal or municipal legislation that is applicable.

Under s. 17(3) of the *Condominium Act, 1998*, the Board of Directors is charged with the responsibility and duty to ensure that all owners, occupiers, lessees, agents and employees of the corporation comply with the *Condominium Act, 1998*, the Declaration, Rules and Bylaws. As such, the condominium's governing documents create a 4th level of governance. While everyone, including condominium owners, are required to comply with federal, provincial and municipal legislation, condominium owners are also required to comply with the Declaration, Bylaws and Rules of their specific condominium even if the condominium's governing documents are more restrictive than existing municipal, provincial and federal legislation. For example, an owner who may want to build a deck will not only have to meet all municipal and provincial requirements but will also have to meet all requirements under the Condo's Bylaws, Rules and Declaration. This will likely require the owner to obtain municipal approval from the building department, approval from the condominium corporation and the execution and registration of a s. 98 agreement prior to commencing construction of the deck.

On the next page you will find an illustration of the legislative framework of a condominium. At the top of the pyramid we start with the Rules which are meant to be flexible and are the easiest to change. As we move down the pyramid, it is much more difficult to make changes to the other governing documents. The *Condominium Act, 1998* and the *Human Rights Code* are pieces of provincial legislation which can only be changed by the legislature. As you move down the pyramid the importance and weight of the document will increase. It is important to note that every item in the pyramid must not contradict the items underneath it. For example, the condominium's Bylaws must be consistent with the Declaration, the *Condominium Act, 1998* and the *Human Rights Code*.

Legislative Framework of a Condominium



Other Legislation that affects a Condo

- Condominium Management Services Act, 2015
- Municipal Bylaws
- Provincial Building Code
- Provincial Fire Code
- Provincial Occupational Health and Safety Legislation
- Provincial Worker's Compensation Legislation
- Provincial Employment Standards Act
- Provincial Occupier's Liability Act
- Accessibility for Ontarians with Disabilities Act (AODA)

While this is not an exhaustive list of other legislation that affects a condominium, it does illustrate some of the more common pieces of legislation that will have an impact on the operation of a condominium. While the *Condominium Act, 1998* is the main piece of legislation that condominiums must follow, it is important for a director to understand what, if any, impact other pieces of legislation will have on decisions made by the Board. The Board should consult their legal advisor about the impact any legislation may have on their decisions.

How to

Amend the Declaration

Section 107 of the *Condominium Act, 1998* outlines how to amend the Declaration. The amendment may not contradict the *Condominium Act, 1998* or the *Human Rights Code*. The Board must approve the amendment and must call a meeting of owners to consider the proposed amendment. The Board must send proper notice of the amendment to mortgagees. 80 to 90% of units must consent to the change in writing depending on the type of amendment sought. The amendment must be registered on title.

Section 109 allows for an amendment to be made by court order in limited circumstances. Section 110 allows for amendments to be made by the Director of Titles in limited circumstances.

Create a Bylaw

s. 56 of the *Condominium Act, 1998* outlines how to create a bylaw. Bylaws must be reasonable and can not contradict the Declaration, the *Condominium Act, 1998* or the *Human Rights Code*. The Board must first approve the drafted bylaw. The bylaw then must be approved by a majority of units (in person or by proxy) at an owners meeting or the majority of owners present at the meeting depending on what type of bylaw is being voted on. A bylaw must be registered on title to be effective.

Create a Rule

s. 58 of *Condominium Act, 1998* outlines how a rule is created. Rules must be reasonable and are restricted to items listed in s. 58(1). They can not contradict the Bylaws, Declaration, the *Condominium Act, 1998* or the *Human Rights Code*. The Board makes rule(s) and gives the owners notice of the rule(s). A rule is effective 30 days after notice is given to the owners unless the owners requisition a meeting to amend or repeal a rule. Rules are not registered on title.

Director's Obligations and Responsibilities

The next page illustrates the various sections of the *Condominium Act, 1998* and Regulations which create obligations and responsibilities for a condominium director in Ontario. Although directors may not carry out all of the tasks illustrated on the next page themselves, they must make sure that their obligations and responsibilities are being completed competently. Despite the fact that directors may delegate tasks to other individuals, such as a property manager, the ultimate responsibility will rest with the directors.

Section 37 of the *Condominium Act, 1998* sets out the standard of care which a director will be held to when fulfilling their obligations and responsibilities. Directors are fiduciaries and must not breach the duty they owe to the condominium owners. Section 37 states that a director must act honestly and in good faith and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If a director fails to meet this standard they have breached their duty and may be found liable for damages. Under section 37(3), a director will not be found liable for a breach of their duties if they rely in good faith upon the financial statements of the corporation that an auditor in a written report, an officer of the corporation or a property manager represents as presenting fairly the financial position of the corporation or upon a report or opinion from a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to the report or the opinion. Section 37(3) provides directors with a good reason to hire professionals such as lawyers, accountants, and engineers to advise them prior to making major decisions. It allows the directors to shift liability from themselves to the professionals if they follow the professional's advice.



Frequently Asked Questions Answered

Q: Must board meetings be held in person?

A: No. As of November 1, 2017 condos are no longer required to have a Bylaw permitting Board meetings to be held by teleconference. They can be held by teleconference or other system that allows directors to communicate concurrently provided directors consent to holding a meeting in this manner. See s. 35(5).

Q: Can you conduct board meetings by email?

A: No. Section s. 35(5) and the Regulations require that meetings be held in person or by telephone conference or another form of communication that allows the directors to participate **concurrently**. Emails do not allow for concurrent communication. You can not make decisions by email as emails are not a properly constituted board meeting.

Q: Can Directors make decisions if no quorum is present at Board meeting?

A: No. Boards can only transact business of the corporation at a duly constituted board meeting at which a quorum of the Board is present. See s. 32. If a condo is unable to consistently reach quorum because there are not enough directors, the condo may need an administrator appointed to conduct business.

Q: Can a corporation borrow money?

A: There are only 2 ways to obtain necessary funds if the corporation does not have the funds to pay for expenditures not listed in the budget. One is to special assess the owners. The other is to borrow money. However, in order for the corporation to borrow money, a borrowing bylaw must be passed. See s. 56(3).

Q: Can a person be paid for acting as a board member?

A: Yes, provided a bylaw permits it. See s. 56(2). However if you are being paid to perform "property management services" as defined in the *Condominium Management Services Act, 2015*, you will need to be licensed under the new legislation governing property management services.

Top 5 Tips to Being a Successful Director

1. Obtain a copy of the *Condominium Act, 1998* and your condo's governing documents (the Declaration, Bylaws, and Rules). Read and understand them.
2. Educate yourself and fellow Board members. Have professionals provide seminars to the Board. CCI chapters across the province hold yearly director's courses.
3. Hire reputable experienced professionals to help you make decisions and carry out your duties and obligations.
4. Communicate effectively and frequently with all members of the board, the unit owners and residents in your condo.
5. Document, Document, Document. Keep detailed records as required by Section 55 of the Condo Act and Regulations.

Voting Requirements under the *Condominium Act, 1998*

Purpose	Votes needed	Condominium Act reference
Quorum for AGM	25% of all units entitled to vote, in person or by proxy at 1 st & 2 nd attempt, 15% at 3 rd or subsequent attempts unless Bylaw increases amount	s. 50 (1.1)
Matters to be voted on by owners at owner's meeting	Generally, a majority of units present at meeting unless Act says otherwise	s. 53
Elect Directors	Candidates with most vote wins	s. 28
Remove Directors	More than 50% of units in corporation vote in favour of removal	s. 33(1)
Approve, Amend or Repeal Rules	More than 50% of units present at meeting	s. 58
Pass Bylaw	An affirmative vote from majority of all units in corporation or majority of owners present at meeting for certain types of bylaws	s. 56(10)
Amend Declaration	80-90% of units depending on amendment	s. 107(2)
Substantial change to common elements, assets or services by corporation	Approval of 66 2/3% of units in corporation	s. 97(4)

It's all in the numbers

		Condominium Act reference
Minimum number of Board members required	3	s. 27(2)
Maximum term of a director can be elected	3 years	s. 31
Minimum number of owner's meetings per year	1 – must at least hold AGM once a year within 6 months of end of fiscal year	s. 45(2)
Frequency reserve fund study done?	3 years	s. 94 & O. Reg. 48/01, s.31
Minimum age requirement to be director	18	s. 29
Number of days required for notice of director's meeting	10 unless bylaws specify otherwise	s. 35(2)
Minimum notice for Owners Meeting	At least 35 days before meeting	s. 45.1 & 47(1)
Minimum number of years to keep financial records	7 years from the end the last fiscal year to which they relate	s. 55(2) and s. 13.1 O. Reg 48/01
Expiry of Lien	3 months after default unless corporation registers lien	s. 85(3)
Minimum Notice before lien registered	10 days	s. 85(4)
Minimum number of years to keep notices and forms submitted to Condominium Registrar	7 years	O Reg. 48/01 s. 13.1
Minimum number of years to keep status certificates issued	7 years	O. Reg. 48/01, s. 13.1
Days to deliver status certificate	10 days after fee paid	s.76(3)

Resource List

Canadian Condominium Institute (CCI)

www.cci.ca for general information and to find a chapter near you. www.ccihuronia.com - CCI Huronia Chapter

Condominium Authority of Ontario (CAO)

www.condoauthorityontario.ca

Condominium Management Regulatory Authority of Ontario (CMRAO)

www.cmrao.ca

Condo Act Forms

https://www.ontario.ca/search/land-registration?sort=desc&field_forms_act_tid=condominium

Legislation

www.ontario.ca/laws for a copy of the *Condominium Act, 1998* and Regulations, the *Condominium Management Services Act, 2015* or any other provincial legislation in Ontario.

Caselaw

www.canlii.org for searching court and tribunal decisions across the country.

Ministry of Government & Consumer Services

www.ontario.ca/page/condominium-law-changes for general information and updates with respect to the changes to the Condominium Act, 1998

Human Rights Tribunal of Ontario

www.hrto.ca

Association of Condominium Managers (ACMO)

www.acmo.org to find out if your property management company is ACMO 2000 certified.

Notes

Representing and advising
Condo Boards or Owners
at all levels of Court,
Tribunals, Boards and at
mediation or arbitration
across Ontario

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